Saskatchewan
Environment and
Public Safety

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Minister

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The Future Of Environmental Assessment in Saskatchewan

The Future of Environmental Assessment in Saskatchewan

A Discussion Paper
On The
Environmental Assessment and Review Process

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Understanding the Jargon

Environmental Impact Assessment (EIA)

- A formal study which predicts the biological, physical and socio-economic effects of proposed economic development projects.
- In Saskatchewan, an EIA is conducted by the project proponent.

Environmental Impact Statement (EIS)

- The written report by a proponent describing the planned development and the results of the proponent's Environmental Impact Assessment.

Environmental Assessment and Review Process

- A process by which the government:
  - reviews and screens project proposals;
  - assesses the need for an Environmental Impact Assessment (EIA) to be done by a proponent, and for an Environmental Impact Statement (EIS) to be written;
  - prepares guidelines for an EIA and EIS;
  - reviews and comments on an EIA and EIS;
  - informs the public of developments and potential environmental effects; and
  - approves developments when they are environmentally acceptable.
- In our province, this process is managed by the Department of Environment and Public Safety, operating under The Environmental Assessment Act and policy guidelines.

Launching the Dialogue

It's time to review the Environmental Assessment and Review Process in Saskatchewan.

Why? Because the Process is a relatively recent method of protecting the environment, and frankly, I don't believe that we are doing it as well as we must.

We still use Saskatchewan's original environmental assessment legislation, which was developed in the late 1970s.

The world has changed a great deal since the first tentative environmental assessment laws appeared two decades ago.

- Our environment is more threatened than ever before.
- Research has provided alarming data about pollution, but also exciting new technologies for environmental protection.
- The public is becoming more active, participating in environmental protection and demanding that governments more closely reflect citizens' concerns.
- While laws covering environmental review originally dealt with each individual project in a separate manner, the public in the 1990's is demanding a more comprehensive approach to environmental protection.

As a result, the role of the Environmental Assessment and Review Process has become more demanding and complex.

Old laws are not handling the new complexities well enough.

Whether it be a water management project in Saskatchewan, a pulp mill in Alberta or a hydroelectric dam in Quebec -- wherever environmental concerns must be weighed against economic development, controversy and confrontation too often result.

Our economic well-being depends on diversification and development, but our environmental well-being demands caution, control and careful planning.

We are learning that economic development and environmental protection are equal parts of a full life. We will live poorly without a sound economy ... and we will live miserably if economic development destroys the environment we inhabit.

Environmental review is one important way of integrating the economy and the environment to achieve sustainable development.

If we are able to assess the environmental impacts of new projects, and then to review those assessments fully, openly and in a responsible way, then as a province we will be able to achieve the economic development we want within the framework of environmental protection.

Public consultation is the key.

On questions of the environment we are all in this together. Governments are discovering that the best environmental management processes incorporate the broadest consultation.

Education, openness and effort are essential.

If a wider base of citizens is to become involved, then individuals must be prepared to master new facts and sometimes new jargon. They must achieve a broader understanding of issues. They must be provided with more information. And they must be consulted continually. Accordingly, extra effort is required of all of us: public, business and government. Without that, the environment will be in peril.

Since becoming Minister of Environment and Public Safety a short time ago, it has become obvious to me that our current Environmental Assessment and Review Process doesn't satisfy the needs of citizens, proponents or regulatory agencies.

How do we revise the process so that it will satisfy the needs of these stakeholders? How do we conduct an Environmental Assessment and Review that represents their interests?

Our government has opted for an open approach.

I have appointed an independent Commission to conduct a wide-ranging public review. Its objective will be to recommend a new Environmental Assessment and Review Process. The Report which the Commissioners

present to me at the end of their inquiries will be released simultaneously to the public. The Government's formal response to the Report will also be made available for public review.

From that extensive consultation will come the final shape of Saskatchewan's new Environmental Assessment and Review legislation.

Your input is important.

Many people are familiar with the issues and procedures of Environmental Assessment and Review; many more are not. That's why I have had this discussion paper prepared. It is a background document to provide facts and to present a range of ideas and concerns. Most of all, it contains a series of important questions to which we must find the answers in the months ahead.

This discussion paper is a starting point only.

It isn't a proposal and it isn't a blueprint which outlines the future. This document is only the first step in getting there -- understanding the Environmental Assessment and Review Process which exists today, and then asking questions about whether that process is compatible with sustainable development.

Dialogue is the objective.

Out of public discussion will come new issues and new ideas for creating better legislation for Environmental Assessment and Review.

I look forward to carrying on this kind of productive dialogue with you. I urge you to participate actively in our examination during the months ahead.

Grant Hodgins

Honourable Grant Hodgins
Minister of Environment and Public Safety

■ This is the subject of this discussion paper: finding the best way to conduct the Environmental Assessment and Review Process in Saskatchewan.

Proponent

■ A person, corporation or government agency proposing a project which may have environmental consequences.

Proposal

■ A description of the proposed project, providing a basis for identifying the likely environmental effects and concerns.

Saskatchewan Environment and Public Safety (SEPS)

■ The provincial government department responsible for administering the Environmental Assessment and Review Process, including The Environmental Assessment Act.

Environmental Assessment Act (the Act)

■ The provincial government legislation under which SEPS reviews the potential environmental effects of a proposed development.

■ The Act says that any project which is defined as a "development" must be reviewed.

Development

■ As defined by the Act, a development is:

- any project, operation or activity or any alteration or expansion of any project, operation or activity which is likely to:
  - (i) have an effect on any unique, rare or endangered feature of the environment;
  - (ii) substantially utilize any provincial resource and in so doing pre-empt the use, or potential use, of that resource for any other purpose;
  - (iii) cause the emission of any pollutants or create byproducts, residual or waste products which require handling and disposal in a manner that is not regulated by any other Act or regulation;
  - (iv) cause widespread public concern because of potential environmental changes;
  - (v) involve a new technology that is concerned with resource utilization and that may induce significant environmental change; or
  - (vi) have a significant impact on the environment or necessitate a further development which is likely to have a significant impact on the environment.

Project

■ A proposed activity.

■ If it is considered to be a "development" under the Act, it must receive approval under the Act, which includes a formal EIA and EIS, along with technical and public reviews.

■ If it isn't a "development", approval under the Act is not required, but the project still must meet all other applicable legislation (for example: fire safety, health standards, hazardous substances regulations, and so on).

How Long will the Review Take?

At the beginning

- discussion paper released;
- Commission appointed.

First six months

- Commissioners set out their program of study;
- public consultations, which may include public meetings, workshops and special research;
- Commissioners prepare their report and present it to the Government and to the public.

Next three months

- the report is reviewed by the public and by Government;
- Government issues a White Paper on the proposed action it will take.

Final three months

- the White Paper is reviewed by the public;
- public meetings are held;
- the Government uses this final review to prepare and implement a plan for revising the Environmental Assessment and Review Process.

How is the Examination of Our Environmental Assessment and Review Process Being Conducted?

This discussion paper is meant to encourage dialogue on the Environmental Assessment and Review process in Saskatchewan. The document has been laid out around a series of questions to:

- describe how and when environmental assessment began;
- give an overview of Saskatchewan's current Environmental Assessment and Review process;
- present issues associated with the Environmental Assessment and Review Process, including The Environmental Assessment Act, and then list a wide variety of options for change; and
- suggest some criteria for weighing the options.

This information provides important background for anyone participating in the examination of the Environmental Assessment and Review process which is taking place in the months ahead. That examination will follow these steps:

1. This discussion paper is being circulated to interest groups, industry and the public at large to provide a focus for discussions.
2. The Government is appointing an independent, three-member Commission made up of one representative from each of the following: (a) industry, (b) environmental interest groups, and (c) the legal and academic community. The Commission will conduct a thorough review of the Act and current processes.
3. The Commission will receive written submissions from any interested party, will hold public meetings for face-to-face discussions and will conduct research as required.
4. The Commissioners will then present a report to the Government containing their recommendations for change to the Environmental Assessment and Review Process, including the Act.
5. The Report will be released to the public at the same time as it is presented to the Minister of Environment and Public Safety.
6. The Government will study the Report, then release a White Paper describing the follow-up steps it plans to take and the rationale for these actions.
7. The White Paper will be widely distributed for public review and comment. Further public meetings will be held by the Government.
8. After this final consultation, the Government will review its plan of action, then launch whatever changes to legislation and processes that are required.

Altogether, this comprehensive examination is expected to take approximately one year.

How did the Environmental Assessment and Review Process Begin?

In the 1960s, many writers -- most notably Rachel Carson in her 1962 book *Silent Spring*, on the dangers of pesticides -- began to change people's attitudes about technology and unrestrained development.

This growing concern was translated into environmental law in the following decade.

The first legislation was the U.S. National Environmental Policy Act in 1970.

It was followed by similar legislation around the world. Fifteen years later, legislation was so universally established that the European Community issued a Council Directive to standardize environmental assessment laws among its member countries.

In 1973, Saskatchewan's Churchill River hydroelectric project was the first major proposed development in the province to thoroughly undergo a thorough study on its environmental and socio-economic effects.

In 1976, the government established an EIA branch in its Environment Department, and in 1980 passed The Environmental Assessment Act.

Some administrative practices have changed, but in general the review process remains the same today.

However, society has been changing rapidly. Environmental awareness has gone well beyond special interest groups, today touching every citizen and becoming a central component of our national attitudes.

The result has been that the 1980s were a decade during which environmental laws have been severely tested in Saskatchewan as in every other jurisdiction.

Environmental confrontations and court challenges have become everyday news in nearly every part of the world. On all sides the laws first developed in the 70s and early 80s are being challenged, reviewed and revised.

What is Saskatchewan's Environmental Assessment and Review Process Today?

The Environmental Assessment and Review process typically begins when a proponent submits a project description or proposal. The Act doesn't require the submission of a proposal. However, a proposal is common practice. The proposal allows the proponent to outline plans to SEPS to find out whether approval will be required under the Act.

The proposal is reviewed by SEPS staff and members of an interdepartmental Environmental Assessment Review Panel. Based on the review, SEPS decides whether the planned activity constitutes a "development" as defined by the Act.

If a project isn't a "development", it is allowed to proceed, but is still subject to all other regulatory requirements which apply, such as fire codes, public health rules, hazardous substances regulations and so on.

If the activity is a "development", approval under the Act is necessary. The proponent completes a study called an Environmental Impact Assessment (EIA) and documents the results in a report called an Environmental Impact Statement (EIS).

Procedures for how an EIA and EIS are done are a result of policy decisions, and are not set out in the Act. The Act says the EIA and EIS have to be done in accordance with the Act's regulations. However, regulations were not developed at the time the Act was passed and have never been established since.

Public notice must be given when an EIA is to be conducted. Current practice is to use printed notices in selected provincial newspapers, announcing the project and proponent, and identifying contact persons in government and in the company who will answer questions the public may have.

Saskatchewan and the World

1970

United States
The National Environmental Policy Act is the world's first environmental assessment law.

1973

Canada
The federal government introduces Canada's first Environmental Assessment and Review process.

1975

Ontario
The Environmental Assessment Act is the first provincial review legislation.

1976

Saskatchewan
An environmental impact assessment branch is established in the Environment Department; a policy on environmental assessment is written.

1980

Saskatchewan
The Environmental Assessment Act is enacted.

1985

European Community
Environmental review laws are so widespread that an EC Council Directive is issued to harmonize national laws in Europe.

The proponent is usually given guidelines or terms of reference for completing the EIA and EIS. These guidelines reflect the questions raised during review of the project proposal, and identify the most important information SEPS wants to see in the EIS. The Act does not require that guidelines be prepared, nor that a proponent is bound to follow such terms of reference.

When there are guidelines issued on a project, they are available to the public and mentioned in the public notices.

A proponent who thinks a project will need approval under the Act might proceed directly to an EIA. In this case, SEPS does not have a project proposal to review first, so project-specific guidelines for the EIA will not be prepared.

An EIS is reviewed by SEPS officials and members of the interdepartmental panel to ensure that pertinent issues are covered. If deficiencies in the Impact Statement are found, the proponent is asked to revise the EIS or submit further data.

The EIS is the proponent's document and represents the developer's conclusions.

When the Government's technical review of the EIS is done, the Impact Statement must be released for public review. The Technical Review Comments of SEPS are also released, providing a summary of environmental considerations and highlighting issues expected to be of greatest interest to the public.

Public notice must be given of the locations at which the documents may be examined. Current practice is to announce the public review period in newspapers, listing project, proponent, locations of documents open for examination, and the period of time during which comments from the public will be accepted.

Anyone may inspect the EIS and the Technical Review Comments, and may make a written submission regarding the development within 30 days of the notice. That period may be extended at the discretion of the SEPS Minister.

The Minister may also order public information meetings or a Board of Inquiry. Such a decision can be taken any time prior to a decision on the development proceeding, but practice has been to hold meetings or start inquiries at the time of the public review period.

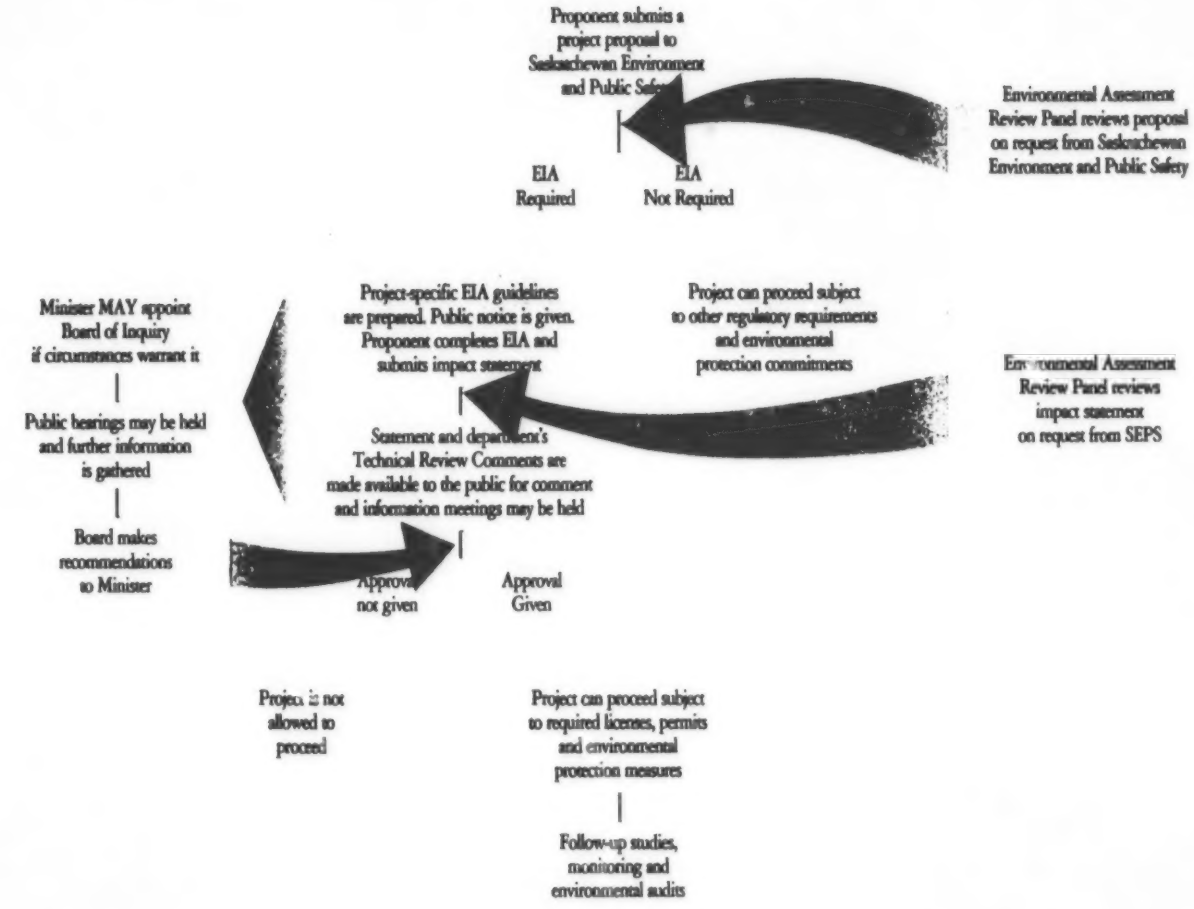
When the public review is done, SEPS environmental experts provide project information to the Minister. The Minister then decides whether the development may proceed and under what conditions.

The Act includes a number of other elements, for example:

- the Minister may conduct research and other environmental studies;
- ministerial approval is needed for any change to a development which does not conform to an initial approval under the Act;
- a proponent may conduct a feasibility study or research on a development prior to obtaining approval under the Act;
- there are penalties for not complying with the Act;
- the proponent is liable for certain loss, damage or injury if the development proceeds without ministerial approval;
- the proponent bears all costs of conducting an EIA and writing an EIS;
- SEPS environment officers may enter, search and seize to obtain documents described in a court order;
- SEPS officials must preserve confidentiality of certain information; and
- the Minister may withhold information on a development if it is in the interest of the public or any person to do so, but not information on pollutants, public health or human safety.

The original Act allowed the Minister to make grants to persons preparing briefs as part of public input on an EIS review. This Section of the Act was repealed after new, blanket legislation was passed allowing Ministers to grant funds to individuals and organizations.

Saskatchewan's Environmental Assessment and Review Process


Proponent submits a project proposal to Saskatchewan Environment and Public Safety
EIA Required
EIA Not Required
Environmental Assessment Review Panel reviews proposal on request from Saskatchewan Environment and Public Safety
Project-specific EIA guidelines are prepared. Public notice is given. Proponent completes EIA and submits impact statement
Statement and department's Technical Review Comments are made available to the public for comment and information meetings may be held
Project can proceed subject to other regulatory requirements and environmental protection commitments
Environmental Assessment Review Panel reviews impact statement on request from SEPS
Minister MAY appoint Board of Inquiry if circumstances warrant it
Public hearings may be held and further information is gathered
Board makes recommendations to Minister
Approval not given
Approval Given
Project is not allowed to proceed
Project can proceed subject to required licenses, permits and environmental protection measures
Follow-up studies, monitoring and environmental audits

The Environmental Assessment Branch reviews about 300 - 400 projects a year. Most are projects which do not meet the criteria of the Act because, amongst other things, the impacts are not significant or regulations are in place to handle all emissions and by-products from the project. The Act does not address these projects and there is no way to ensure that conditions can be imposed on these projects unless regulations or other approval processes are in place.

What are the Issues?

How acceptable are these environmental assessment procedures?

Questions have arisen on:

- administration of the review process;
- application of the review process;
- scope of the review process;
- role of the public;
- role of the proponent;
- role of the government; and
- procedures.

Who Should Administer the Process?

A branch of a government department is the administrator. There have been public concerns that it is not credible or objective for government officials to review those projects which the government itself has proposed or endorsed. Who should administer the review process? Are there methods of adminstration which could improve credibility and objectivity while also being efficient and effective?

When Should the Review Process be Applied?

Submitting a project proposal is not required by the Act, so proponents may not know whether their plans should be reviewed. In addition, the current definition of a "development" is subject to interpretation, which may lead to inconsistent application. Moreover, the Act deals solely with "developments" and does not outline a review process for other projects. There is no mechanism to assess these projects and impose environmental conditions of approval under the Act. Finally, the Act and its process address capital projects only. Government programs and policies do not undergo the review process even though they may have environmental implications.

Can legislation outline more accurately the projects which require a formal impact assessment or a specified level of review? Are there procedures which can be used for different scales or classes of projects? Should the process apply to government programs and policies, and if so, how should this be done?

What Should be the Scope of a Review?

Scope refers to the range of issues and the ability of the process to include concerns which are more than just project-specific or program-specific. The Act deals only with a development's impacts and mitigative measures. There are no procedures to deal with regional effects. For example, if more than one development is located in the same area, leading to cumulative effects, it is not clear who should be responsible for predicting those total effects and mitigation.

The Act is also largely re-active, rather than pro-active. The review process starts only after a proposal is submitted. No prior regional planning is done to determine maximum capacity of the environment to accept impacts from a development. Because of this, proponents cannot be directed to areas of higher carrying capacity or discouraged from areas already facing over-use or environmental stress. There is no requirement, except as outlined in guidelines on a specific project, for proponents to assess various locations or processes and to choose the optimum from an environmental as well as an economic perspective.

In addition, the Act does not encourage government or proponents to consider alternative energy sources, conservation or renewable resource substitutes. Yet these matters reflect the challenges we face as a global community and there is concern that they should be part of the larger perspective.

Should some or all of these broader questions be encompassed within the Environmental Assessment and Review Process and the Act? Can they be; and if so, how?

Finally, the Environmental Assessment and Review Process is limited in what it actually addresses. Approval under the Act relates to environmental aspects only, not general economics, resource use planning or technical efficiency. But if sustainable development is a goal, should all aspects of development be raised in a comprehensive, integrated manner? Should the process be conducted so broadly that approval under the Act would mean approval of all aspects of a project, not just environmental issues? Should the environmental review be part of this larger review, or the basis for it? Should a project fit into a long-range sustainable development strategy for the province before it undergoes environmental assessment review?

What Role Should There Be for the Public?

The public has always played a role in the Environmental Assessment and Review Process. Proponents undertake public involvement programs as a part of an EIA. The Act requires public review of impact assessment documents and provides for public meetings or inquiries at the discretion of the Minister. Nevertheless, issues arise relative to the public's role. Who represents the public and who should therefore be involved in project evaluation? Should the "public" include national and international publics, or only the local public directly affected by a project?

Citizens today request more information and express concerns earlier in the process of reviews. Some suggest that formal public inquiries should be mandatory, because they could provide the most meaningful way for the public to be heard and for objective, arms-length assessments to be made.

How can more meaningful input from the public be incorporated into the review process? How should the public be involved and who can most fairly speak for the public?

What Role Should There Be for the Proponent?

Some members of the public argue that a proponent cannot produce an unbiased Environmental Impact Statement, and suggest that the EIA and EIS be done by government or an independent agency. Yet the proponent is required to pay for EIA studies and it is the proponent's project which is being judged.

What is the fairest method of administering these studies, given the public's concerns and the proponent's interests? What about the role of the professional consultants often used by proponents, government and interest groups to do studies – how does their independence and credibility relate to this?

Proponents submitting a proposal may include confidential information whose release to public and competitors could jeopardize market position or finances. Yet some members of the public would like to be involved at the earliest stages and in the most complete way. Is there a method by which the people can be informed of a project early while at the same time preserving the proponent's right to confidentiality?

Virtually all proponents include public involvement during an EIA. But some participants in meetings have argued that this process is not always meaningful and that public concerns are not properly reflected in the outcome of the EIA. Should proponents be responsible for public involvement? If so, should specific requirements be established for this?

The government gives a proponent project-specific guidelines for a development to help in completing the EIA and EIS. But proponents do not always feel it is their responsibility to follow the guidelines. A confrontation between government and proponents can result. Should proponents have the right to negotiate EIA terms of reference and EIS content?

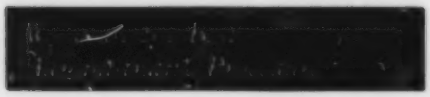
The Act does not address the case where a development which has not been approved later re-enters the review process and again

requires approval under the Act. Should a proponent be allowed to re-apply for approval for the same or a slightly-altered development? What if additional environmental protection measures are integrated into the new plan? Should a time limit be required between the initial rejection and a new submission?

In some cases the time from launching a proposal to submitting final documents may be years, during which environmental conditions and public concerns may change. Should proponents be given time limits for each of the steps in the process?

One branch within one department administers the Environmental Assessment and Review Process. Professional staff manage inter-agency reviews of proposals and make initial decisions on whether a project requires approval under the Act. Then staff also oversee technical and public reviews of impact statements and provide recommendations on whether a "development" which has undergone EIA review should be approved.

What role should government agencies play in the process? Should a government agency administer and direct the process or should it merely monitor the process without formal involvement? Should a government agency perhaps be responsible for completing environmental impact assessments itself? Should its only role be pro-active regional assessments which outline limits for development in various regions of the province? Would it be adequate if government agencies only regulated the way a development operates after the EIS has been completed and approved by some other body? Should government be part of public involvement programs? Should it have the right to approve or reject projects without any formal review having been completed?



Questions have frequently been raised about procedures that could improve the process.

Should Project Proposals be Required?

The Act doesn't require project proposals. Even when proponents do submit proposals, there are no legislated requirements for the content. Should a proposal be required? How can we make sure information in a proposal is adequate to judge environmental effects?

What Should Be the Requirements for the EIA and EIS?

Proponents may prepare an EIS without having submitted an earlier proposal, and therefore may not have received project-specific guidelines from government reviewers. Impact Statements done this way may not include enough information. The EIA may be conducted using inappropriate methods. The EIS may be poorly organized, incomplete or with information presented in an inefficient or confusing manner. Should the scope of the EIA and the content of the EIS be controlled? If so, by whom?

What Technical Review Information Should the Government Make Public?

Generally there are two technical reviews. Preliminary Technical Review Comments outlining EIS deficiencies are given to the proponent to make revisions. When the EIS is satisfactory, final Technical Review Comments are prepared and made public along with the final EIS. Should this practice continue, or should the original EIS and all technical review comments be released? For that matter, should the public review an impact statement even before any comments from government are issued?

What about Funding for Intervenors?

A different law allows the public to apply for funds to prepare review comments. Are these funds readily available for environmental reviews? Are the amounts sufficient? Should such funding be the responsibility of the project proponent instead of the Government?

Should Time Limits Be Spelled Out?

There are few time limits in the Act and project-specific guidelines. Proponents may not be able to plan for project construction, because there is no maximum on how long reviews can take. However, if time is too short, there may be inadequate public input and technical review.

Public Notices

The Government must notify the public at certain stages during a review. One notice is released when it has been determined that an EIA is to be conducted; this notice says the proponent must undertake the EIA and write an EIS. A second notice announces the time limits for the public review period and the locations at which the documents can be examined.

Should the proponent be responsible for announcing submission of the project proposal? Should there be a notice that a proposal has been submitted; and, if so, who should place the notice? Should the form and number of notices, and the media used, be specified in the Act? Should the locations for review of statements be increased? Should Statements be provided directly to individuals who request them?

Should there be Follow-Up when a Project is Complete?

There is no general requirement for proponents to report on the accuracy of their impact predictions or the success of mitigative measures to protect the environment. Should EIA continue to be largely predictive? How can we incorporate results from past developments into future reviews?

What about Enforcement and Penalties?

Are penalties and enforcement sufficient, given a growing public concern about environmental protection?

Review Project Changes

A proponent must receive ministerial approval for a change in a development if that change does not conform with the conditions of the initial approval. Even very minor alterations may require ministerial approval, and changes which are themselves not "developments" may have to undergo formal EIA. Which types of changes should require a formal EIA/EIS and approval under the Act, and which should be dealt with through follow-up licensing and permits?

Should Appeals be Allowed?

There is no appeal mechanism in the Act. There is no way to challenge departmental decisions on whether a project is or is not likely to be considered a "development", and all ministerial decisions on approvals are final. Should proponents or the public be allowed to appeal these decisions? If so, who should rule on the appeal and what procedures should be followed?

What are Some of the Options for Change?

Some of the questions raised in the previous section have been addressed in other provinces. Other solutions have been suggested by members of the public, industry and interest groups, or have appeared in research documents. This section lists some of these options.

[redacted]

Issue:

Government sponsored or government endorsed projects are reviewed by departmental staff, sometimes leaving the impression that the review may not be objective.

Options:

- Set up an independent commission, board or "environmental court" to assess public concerns or administer the entire Environmental Assessment and Review Process.
- Restructure the Environmental Assessment Branch into a more autonomous and independent entity with the power to oversee public involvement and administer the Environmental Assessment and Review Process.
- Provide municipalities with the authority to administer the process under agreements which ensure that the principles of the legislation are adhered to.
- Status Quo – allow a branch within SEPS to administer the Act.

[redacted]

Issue:

The Act applies only to "developments", and the criteria used are subject to interpretation.

Options:

- Include in the Act a clear list of projects for which a proposal must be submitted, and a clear list of proposals which will require a formal EIA.
- Include in the Act a reference to the person or agency that has the final authority to determine what a "development" is (and perhaps use a less confusing term than "development").
- Allow a committee, commission or board to rule on the projects which should undergo an EIA.
- Require all projects to undergo an EIA, and then scale each EIA to the size and significance of the project.
- Set more objective criteria for the definition of "development".
- Status Quo – require that SEPS staff interpret and determine the requirement for an EIA, based on comments of an interdepartmental review panel and the existing criteria in the Act.

Issue:

The Act does not address projects which do not meet the criteria for a "development", and there is no adequate legal way of imposing conditions on such projects.

Options:

- Include in the Act the ability to impose binding conditions on projects which are not determined to be "developments".
- Develop criteria for scales or classes of projects. Each class would have differing degrees of environmental concern, and as a result have different information and approval requirements.
- Pursue "class environmental assessments" for appropriate types of projects. In this way, environmental impacts could be predicted and environmental procedures and protocols prescribed prior to projects being allowed to proceed.
- Require all projects (not just "developments") to undergo an EIA, and scale the EIA to the size and significance of the project.
- Establish a mechanism and criteria whereby projects are screened by the government department which is funding the operation or which would provide licences and permits. Have those determined to be "developments" undergo an EIA.
- Allow projects for which concerns are narrow in scope to proceed without a formal EIA, but put in place a mediation, conciliation or arbitration process to address environmental issues.

- Require that the review of projects not requiring formal EIAs be administered by the government agencies which have the most significant regulatory responsibility for the project. The lead agency would have the authority and be responsible for co-ordinating input from other agencies and from the public, and for imposing necessary conditions. Prepare lists showing which agencies are responsible for specific projects and requirements.
- Status Quo – allow SEPS to continue determining the projects which are not "developments" as defined by the Act, thereby making no change in legislation regarding formal conditions on other projects.

Issue:

The review process deals only with projects and does not encompass government programs and policies which may have environmental implications.

Options:

- Require that certain types of programs and policies go through the review process.
- Formulate a separate review process to address certain types of programs and policies.
- Direct responsible agencies to ensure that environmental implications are accounted for when programs and policies are being developed.
- Status Quo – do not assess the environmental implications of programs and policies in a formal way, but apply the process to any projects which result.

[redacted]

Issue:

There are different opinions on what the Environmental Assessment and Review Process should deal with.

Options:

- Require that proponents address the broader issues of general economics, technical efficiency and resource use planning. Government prepares for this broad approach by developing policies on economic-environment integration.
- Status Quo – continue to have the process and the Act address only project-specific environmental effects.

Issue:

The Act and process are currently project-specific; regional effects are not easily addressed.

Options:

- Require that the proponent of the most recently proposed project in a region assess the regional effects if more than one development is located in that region.
- Require that the Government or some other authority be responsible for determining cumulative impacts and imposing conditions on existing and new developments based on the degree of impact associated with each development.
- Require that government set limits for regional development by defining maximum levels of disturbance to the environment and therefore maximum levels of development. That is, the total environmental impact of all developments in a region would not be allowed to exceed the regional maximums.
- Ensure that the review process examines all activities related to the development, even including activities proposed by other proponents.
- Status Quo – do not address regional effects and cumulative impacts within the Act, continue to treat projects on an individual basis.

Issue:

Review of a project's alternatives and sustainable substitutes is not required by the Act.

Options:

- Ensure that proponents incorporate resource and energy efficiency into their development plans prior to the EIS and substitute renewable for non-renewable resources.
- Require that proponents submit a detailed assessment of alternative processes and locations; require that they show the process or site is environmentally and economically preferable.
- Status Quo – do not require the comprehensive examination of alternatives or substitutes in the Act.

Issue:

There are different views as to who should represent the public and what level of public response constitutes widespread concern. The definition of "public" and "widespread concern" are unclear.

Options:

- Define "public" as: people in the local area where the development is taking place.
- Define "public" as: people in Saskatchewan.
- Define "public" as: any individual, worldwide, who is interested in the project.
- Once the definition of "public" has been determined, specify the number of public expressions of concern (or other criteria) that constitute "widespread concern".
- Status Quo – leave the term "public" undefined and the interpretation of "widespread public concern" discretionary.

Issue:

Suggestions have been raised that the public has limited access to information and restricted opportunity to express concerns.

Options:

- Announce receipt of proposals and make them available to the public for review and comment; or allow the public to inspect proposals at the department or other locations.
- Make EIA documents more widely available to the public and encourage public response to them.
- Create an independent committee or board with representation from the public at large or interest groups, to review the proposal on behalf of the public and to solicit input.
- Establish requirements for public involvement which must be addressed by proponents.
- Require that the Government or other administrative body hold mandatory public meetings or inquiries.
- Status Quo – do not make proposals available to the public; continue to make EIA documents available at selected locations; continue public meetings or inquiries at the Minister's discretion.

Issue:

There have been public concerns expressed about whether the proponent can produce an unbiased EIS. On the other hand, proponents argue that they are financially responsible for the EIA and EIS, and that they must be allowed to state their position regarding the project and its possible environmental effects.

Options:

- Create a stakeholders' panel or board to oversee or complete the EIA. The panel could be responsible for ensuring that issues are addressed, findings presented objectively, public concerns considered

and environmental mitigation optimized.

- Require that the proponent complete the impact assessment and provide the EIS to an independent panel or board for review.
- Allow government agencies to manage the EIA with a more open system of proponent and public involvement. Independent analysis of impacts and mitigation could be undertaken and provided to the proponent, the public and the Government. The results could then be discussed further or all stakeholders might be obliged to accept the findings.
- Status Quo – require the proponent to complete the EIA and EIS, and to submit it to SEPS for review.

Issue:

Members of the public may request all project-related information, even confidential information which could jeopardize the proponent's position in the marketplace.

Options:

- Allow proposals to be made public, in which case proponents would have to exclude any confidential information from proposals.
- Require that a summary of the proposal be prepared and made available to the general public.
- Do not release information about proposals to the public, except the type of project and location.
- Status Quo – remove confidential information from proposals which are made public, and from EISs to the extent the Act allows.

Issue:

Proponents may conclude that it is not their responsibility to meet the requirements outlined in the government's guidelines.

Options:

- Require a proponent to prepare detailed EIA terms of reference which outline how the proponent will meet project-specific guidelines. When the terms of reference are adequate, the responsible authority would give approval in principle, and these terms of reference would later be used to determine the adequacy of the EIS.
- Formulate a standard set of guidelines for each type of project. The proponent would use these generic guidelines to prepare project-specific terms of reference which indicate what studies would be undertaken. The responsible authority would review these and require revisions as necessary until terms of reference were mutually agreed upon.
- Require in legislation that the proponent meet the guidelines developed by the responsible authority.
- Status Quo – continue to provide project-specific guidelines that have no legislated authority.

Issue:

When proponents undertake public involvement programs during an EIA, the public may not trust that their concerns will be properly addressed.

Options:

- Exclude the proponent from public involvement. Require that government or an independent body complete this part of the process.
- Status Quo – allow a proponent to manage the public involvement program and to incorporate the results into its EIA.

Issue:

The Act does not deal with the case where a proposal is re-submitted after being rejected.

Options:

- Do not allow re-submission unless project design has been revised to reduce environmental impacts.
- Allow re-submission after a specified time. This assumes that public reaction or environmental circumstances may have changed since the original proposal.
- Status Quo – leave the legislation open to entertain any proposal submitted at any time.

Issue:

Proponents may delay elements of the process, or the development of projects, for several years. During such delays environmental information and public concern may change.

Options:

- Require that proponents complete the process within specified time limits, or else re-enter the process from the beginning.
- Require proponents to begin construction within a specified time, or else re-enter from the beginning.
- Set up a specific review process for proponents who do not proceed with a development within a specified time. For example, proponents could be required to submit documents which confirm that original environmental information is still valid and that public reaction has not changed.
- Status Quo – allow a proponent to complete an EIA and EIS with no time restrictions, and to start the project at any time following approval.

[redacted]

Issue:

The Government's role may not be appropriate in terms of administration, component completion, public involvement or leadership in the review process.

Options:

- Remove the provincial government from any environmental assessment decision-making or any involvement with the review process.
- Create a designated authority to administer the review process; require that Government monitor the agency to ensure all steps in the process are followed.
- Require that Government agencies deal only with regulating developments after an EIS has been completed and approved by some other review body.
- Require that Government be responsible only for the public involvement portion of the review process.
- Require that Government agencies be responsible only for projects which do not require a formal EIA, with another body being responsible for those projects which do require formal EIAs.
- Require that a Government agency conducts the EIA and prepares the EIS for all developments.
- Require that government agencies prepare regional development plans which specify maximum carrying capacities and associated limits for development. Developments would then have to fit within the plan.
- On a broader scale, require government to integrate environmental review procedures into all legislation or to issue directives such that environmental protection becomes the responsibility of all agencies and, as such, environmental considerations are integrated with economic considerations early in project planning.

- Status Quo – require that SEPS administer the review process and the Act.

Administrative Procedures

Issue:

Project proposals are not required under the Act. And the detail and content of those proposal documents which are provided may be inconsistent.

Options:

- Include in legislation a requirement for submission of a project proposal for specific projects.
- Standardize the information required in a project proposal.
- Status Quo – do not require proposals in the Act, but request them from proponents.

Issue:

An EIA or EIS may be inadequate: for example, inappropriate methods of assessment, and poorly organized or incomplete Impact Statements.

Options:

- Describe in the Act the requirements for completion of an EIA or an EIS.
- Status Quo – do not include requirements for an EIA or EIS in the Act, but include them in the project-specific guidelines.

Issue:

It is not resolved what Government technical review information should be made public or the form it might take.

Options:

- Submit preliminary and final Technical Review Comments along with the EIS during public review.
- Request the public to review and comment on Impact Statements in the absence of any information from government.
- Status Quo – include only the final Technical Review Comments when the EIS undergoes public review.

Issue:

There is the question of funding for intervenors – availability, sufficiency, and whether the proponent should be responsible for some or all of the cost.

Options:

- Improve public awareness about the availability of existing funding opportunities.
- Determine whether existing funding is adequate; specify required changes to legislation.
- Require that the proponent provide a specified portion of intervenor funding.
- Status Quo – continue to rely on the existing legislation which provides for grants.

Issue:

Timing for every step in the process is not clearly defined in the Act, creating uncertainty for proponents and raising questions about adequate timelines for the public and for technical reviewers.

Options:

- Require that time limits for components of the review process be identified in the Act.
- Identify approximate time limits in guidelines, but not in the Act.
- Extend the length of time for the public review step in some or all cases.
- Status Quo – retain current time limits for the review components.

Issue:

Public notices may not be effective or adequate.

Options:

- Require that the proponent take responsibility for announcing the submission of a project proposal.
- Require the Government to announce when its technical review of a proposal is underway.
- Assess requirements for public involvement and include in the Act specifications for public notices such as: form of notice, number of notices, media to be used and types of facilities to be provided with EIA documents.
- Make each EIS available to any individual on request.
- Status Quo – make announcements as currently practiced.

Issue:

There is no requirement for follow-up on the accuracy of impact predictions on a project or the success of mitigation measures.

Options:

- Require proponent to regularly report to the Government on the accuracy of predictions and the effectiveness of mitigation.
- Require the Government to regularly report on the accuracy of predictions and effectiveness of mitigation.
- Status Quo – do not specify requirements for follow-up.

Issue:

Fines for non-compliance may not meet public expectations.

Options:

- Fine corporations more than individuals.
- Increase fines for all, or for specific types of non-compliance.
- Status Quo – continue with current fines of $5,000 for the first offence and $1,000 for every day of continued non-compliance.

Issue:

Changes to an approved development may present problems. The Act requires that proponents must seek ministerial approval for even minor changes. A formal EIA may be required even though some changes may not be "developments".

Options:

- Allow licensing and permitting agencies to address minor project changes, with environmental assessment legislation applying only when fundamental changes in project design are proposed.
- Apply the Act only where the change would be classified as a "development" for which a formal EIA would be required.
- Status Quo – require approval under the Act when a proponent wishes to make a change which does not conform to conditions of the initial approval.

Issue:

There is no appeal mechanism in the Act.

Options:

- Include in the Act the ability for proponents or the public to appeal decisions.
- Status Quo – continue to exclude appeals.

Weighing the Options

Many options have been suggested on these pages. Many more will arise during the public dialogue.

To evaluate the options, the following set of questions may provide helpful criteria.

- How significant is the issue?
- Is change necessary, or can the existing process and the current Act address the problem?
- Does the option for change ensure that protection of the environment will be realized in all cases?
- Does the option address the public's interests?
- Is the option fair to proponents?
- Will the option discourage or encourage developers from choosing Saskatchewan for their projects?
- Does the option reflect current environmental thought and the challenges we face?
- Will the option be straightforward, easily followed and effectively administered?
- Does the option ensure the constitutional rights of those involved?
- Does the option ensure sound integration of the environment and the economy. That is, does it allow for sustainable development?

These are some ideas; use them as much as they prove helpful.

There will be many other options. There will be other ways of weighing priorities. The preceding pages are meant only to provide a framework within which a public dialogue can begin.

The range and depth of that dialogue will be determined by the extent to which all the stakeholders, including the general public, actively participate.

A thorough re-examination of Saskatchewan's Environmental Assessment and Review Process will demand that all of us share a desire to learn and a willingness to speak out.

Looking for Information

A separate publication, titled "Supporting Documents", carries additional information on the Environmental Assessment and Review Process in Saskatchewan.

The publication includes:

- Guidelines to Saskatchewan's Current EIA Process;
- The Saskatchewan Environmental Assessment Act; and
- The Environmental Assessment and Review Process in Other Parts of Canada

For this or other information about Saskatchewan's Environmental Assessment Act, or about the public review of the Act, contact:

Harvey J. Linnen
Director of Public Affairs

Saskatchewan Environment and
Public Safety
3085 Albert Street
Regina, Sask. S4S 0B1

Telephone: 787-0740
Fax: 787-0197

Saskatchewan
Environment and
Public Safety

Supporting Documents for "The Future of Environmental Assessment in Saskatchewan"

Supporting Documents
for

"The Future of Environmental Assessment in Saskatchewan"
A Discussion Paper on the Environmental Assessment and Review Process

August, 1990

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The Saskatchewan Environmental Assessment Act 19

The Environmental Assessment and Review Process in Other Parts of Canada 27

Foreword

This publication contains three separate documents:

- guidelines currently used in the Environmental Assessment and Review Process for new developments and projects in Saskatchewan;
- the Act under which the Environmental Assessment and Review Process is administered; and
- a summary of Environmental Assessment and Review Processes in other provinces.

These three documents provide detailed background information to support a discussion paper entitled "The Future of Environmental Assessment in Saskatchewan".

Both publications -- the Discussion Paper and these Supporting Documents -- have been prepared as part of a comprehensive study of Saskatchewan's Environmental Assessment and Review Process.

That study will begin with an independent Commission which will hold public consultations and make recommendations to the Government. Following this, the Government will prepare an action plan to make changes to the Assessment and Review Process, and will hold public meetings to discuss those proposed changes. Finally, changes to the Review Process will be implemented through legislation.

For additional copies of the publications, or further information on the study, contact:

Harvey J. Linnen
Director of Public Affairs

Saskatchewan Environment and Public Safety
3085 Albert Street
Regina, Sask. S4S 0B1

Telephone: 787-0740
Fax: 787-0197

Guidelines to Saskatchewan's Current Environmental Assessment and Review Process

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I *Introduction*

The mandate of Saskatchewan Environment and Public Safety is to protect and enhance the environment in a manner that promotes the physical, economic and social well-being of the people of Saskatchewan today and in the future.

Within this mandate, the department is responsible for ensuring that all plans for future development activities are fully evaluated as to the acceptability of their likely environmental implications *before* commitments to proceed with those plans are made. This is achieved, in part, through the Saskatchewan Environmental Assessment and Review Process.

The Saskatchewan Environmental Assessment and Review Process provides for a co-ordinated, comprehensive and thorough review of the environmental issues associated with certain development proposals, and ensures that the public and responsible authorities are aware of the environmental tradeoffs and risks which must be accepted to realize the benefits associated with each proposal.

This document has been prepared to assist potential developers and others in understanding the Saskatchewan Environmental Assessment and Review Process, and the roles and responsibilities of the participants.

The Environmental Assessment Act (1980) requires that a proponent receive ministerial approval before proceeding with a development. The Act [Section 2(d)] defines "development" as:

> "... any project, operation or activity or any alteration or expansion of any project, operation or activity which is likely to:
>
> (i) have an effect [sic] on any unique, rare or endangered feature of the environment;
> (ii) substantially utilize any provincial resource and in so doing pre-empt the use, or potential use, of that resource for any other purpose;
> (iii) cause the emission of any pollutants or create by-products, residual or waste products which require handling and disposal in a manner that is not regulated by any other Act or regulation;
> (iv) cause widespread public concern because of potential environmental changes;
> (v) involve a new technology that is concerned with resource utilization and that may induce significant environmental change; or
> (vi) have a significant impact on the environment or necessitate a further development which is likely to have a significant impact on the environment."

The Lieutenant Governor in Council may exempt developments from the application of the Act only in cases of emergency (Section 4).

For purposes of the environmental assessment process, "environment" is defined [Section 2(e)] as:

> "(i) air, land and water;
> (ii) plant and animal life, including man; and
> (iii) the social, economic and cultural condition that influence the life of man or a community insofar as they are related to the matters described in subclauses (i) and (ii)."

An environmental impact assessment (EIA) would be conducted for most major projects proposed in the province. Examples include:

- linear developments (roads, transmission lines, pipelines);
- large-scale industrial facilities;
- mines;
- hydroelectric and thermal power plants;
- large-scale water management projects; and
- large-scale recreation or residential developments.

Saskatchewan Environment and Public Safety encourages proponents to contact the department at an early stage in project planning. Staff are available to discuss all aspects of the project and will be able to outline potential concerns and the department's environmental protection policies and regulatory requirements. Advice regarding what should be included in a project proposal can also be provided.

II *The Saskatchewan Environmental Assessment and Review Process*

The Act requires that the proponent of a "development" conduct an environmental impact assessment and prepare and submit an environmental impact statement (EIS) in accordance with the regulations. Because regulations have not yet been prepared, Saskatchewan Environment and Public Safety follows a series of steps established by policy (see diagram on page 8). These steps are described in the following text.

1. PROJECT PROPOSAL

The environmental assessment process normally begins with the proponent's submitting to Saskatchewan Environment and Public Safety a project proposal. The purpose of the proposal is to provide a sound basis for identifying the likely environmental effects of, and concerns about, a proposed project. Guidelines with respect to the types of information which should be included in a project proposal may be found in Section III of this document.

2. SCREENING

Proposal Review

Saskatchewan Environment and Public Safety screens project proposals to determine:

(i) whether or not ministerial approval under *The Environmental Assessment Act* would be required for the project;
(ii) the nature and scope of an EIA, should approval under the Act be considered necessary; and
(iii) other regulatory requirements associated with the proposed project.

In most instances Saskatchewan Environment and Public Safety will consult with an interdepartmental Environmental Assessment Review Panel prior to deciding whether an EIA is necessary. The department may also consult with special-interest groups or the public at large when reviewing project proposals.

Screening is normally completed within approximately 30-45 days of the department's receiving a project proposal. Where insufficient information has been provided or where a decision would be based, in part, on the proponent's plan of action, the department will request additional information or will ask the proponent to make specific commitments (e.g., environmental protection plans, environmental studies, mitigation) before deciding on whether an EIA is necessary. The department may also ask the proponent to undertake a public information meeting(s) prior to determining whether approval under the Act is required.

Need for Ministerial Approval

EIA Not Required

If, upon completion of screening of a project proposal, it is determined that approval under the Act is not required, the proponent may proceed with the project subject to all other statutory and regulatory requirements and to any commitments the proponent has made regarding specific environmental protection measures.

EIA Required

If it is determined that approval under the Act is required, the need to conduct an EIA is identified to the project proponent. The department works closely with the proponent during the period in which the EIA is conducted to ensure that all pertinent environmental issues are addressed satisfactorily.

3. CONDUCTING THE ENVIRONMENTAL IMPACT ASSESSMENT

If it is determined that an EIA is necessary, the department prepares project-specific impact assessment guidelines. These guidelines provide a detailed description of information required to resolve potential concerns and issues associated with the project, and supplement the department's general EIA guidelines (Section IV).

As required by the Act, public notice is given by the department that an impact assessment is to be conducted. The proponent then conducts the impact assessment and prepares and submits an environmental impact statement. The statement describes the project and the existing environment, evaluates potential effects of the development on the environment, outlines the steps the proponent will take to mitigate adverse impacts and enhance beneficial effects, and identifies residual impacts.

The length of time required to complete an EIA will depend to a great extent on what is being proposed and how much environmental information is available for the project and the geographic area in question. There will be instances where baseline environmental data will have to be collected over an extended period of time to allow for a more accurate prediction of project-related effects.

4. TECHNICAL AND PUBLIC REVIEWS

Saskatchewan Environment and Public Safety co-ordinates an interdepartmental technical review of the impact statement. If the EIS is found to be deficient, the department prepares Preliminary Technical Review Comments and directs the proponent to undertake additional studies or to provide additional information with respect to the development and its potential environmental effects.

When Saskatchewan Environment and Public Safety is satisfied that the impact statement adequately describes the potential impacts of the development on the environment, the department prepares final Technical Review Comments. These comments assist both the public and government decision-makers in reviewing the EIS and evaluating the environmental acceptability of the project. These comments provide information regarding the environmental impacts predicted, the significance of those impacts, and the effectiveness of the proposed mitigative measures. They may include points on which the department disagrees with the proponent's conclusions.

Technical review of the impact statement and preparation of review comments is generally completed within 60 days of receipt of the documentation. If the EIS is deficient and Preliminary Technical Review Comments are provided to the proponent, a revised statement must be submitted. Review of the revised EIS and preparation of the department's final Technical Review Comments is normally completed within 30-45 days.

Following the technical review, public notice is given by the department, and the impact statement and final Technical Review Comments are made available for public review and comment. The department may also arrange for information meetings to be held at this time. As required by the Act, the EIS and Technical Review Comments are available for public review for a minimum period of 30 days.

5. MINISTERIAL DECISION

When the Minister is satisfied that the proponent has met all the requirements of the Act, he/she will either give ministerial approval to proceed, with or without conditions, or refuse to approve the development.

If ministerial approval under *The Environmental Assessment Act* is received, the proponent may proceed with the development subject to all other statutory and regulatory requirements.

Where a proponent has been granted ministerial approval to proceed, and intends to make a change in the development which does not conform to the terms or conditions contained in the approval, he/she must inform the department of the proposed change before proceeding. Upon receiving this notice, the Minister will give ministerial approval, with or without conditions, refuse to approve the change, or direct the proponent to seek approval for the change through the EIA process.

6. BOARD OF INQUIRY

At any time prior to making a decision whether or not to approve a project, the Minister may appoint a Board of Inquiry to further assess the implications of proceeding with the development. The Board solicits public comment and/or gathers further information on those issues included in its Terms of Reference and submits a report containing its recommendations to the Minister.

On the basis of the Board's recommendations and the results of the environmental assessment the Minister may approve the project, with or without conditions, or not allow the development to proceed.

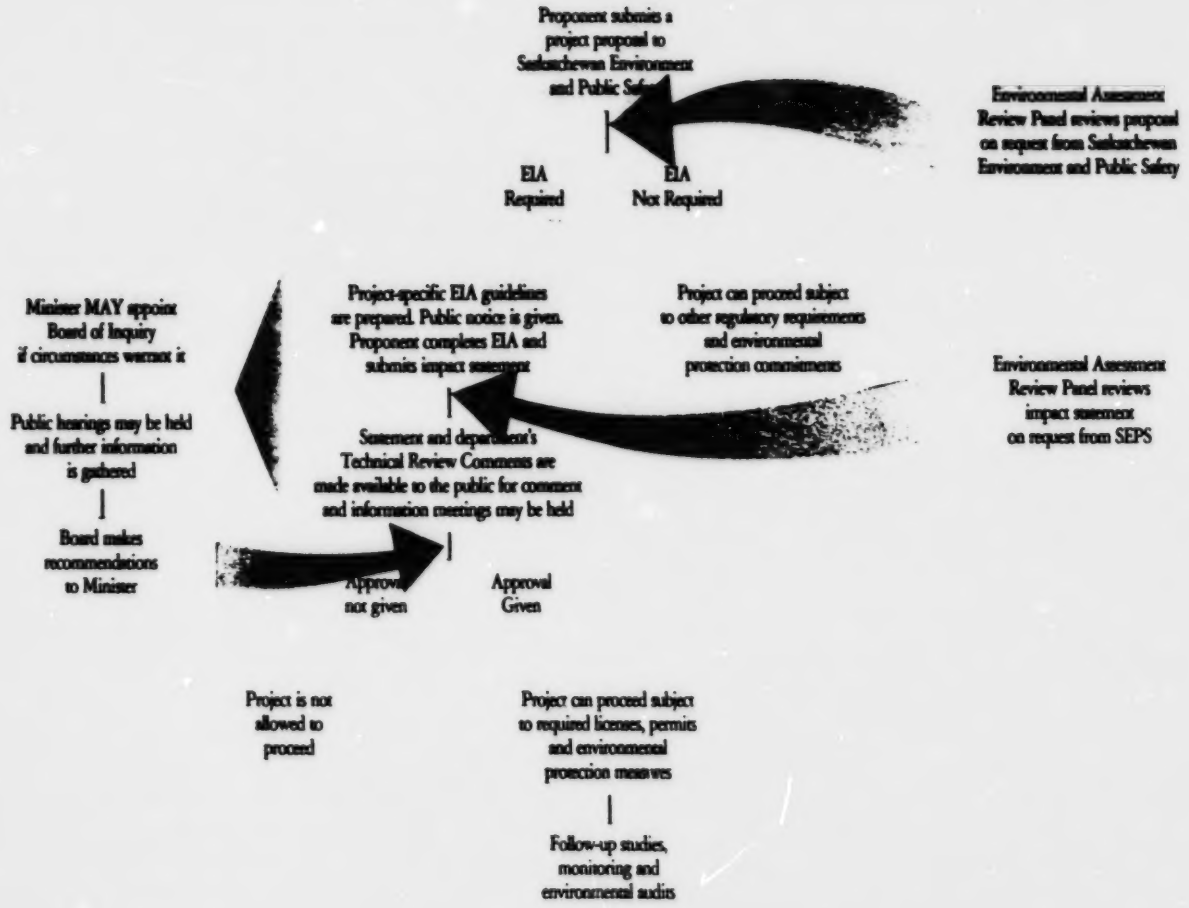
7. ADDITIONAL INFORMATION

For additional information on the Saskatchewan Environmental Assessment and Review Process contact:
Director
Environmental Assessment Branch
Saskatchewan Environment and Public Safety
3085 Albert Street
Regina, Saskatchewan S4S 0B1
Phone: (306) 787-6171

The following publications are currently available:

- The Environmental Assessment Act (1980), 9 pp.
- Quarterly Project Status Report
- Guidelines for the Establishment and Operation of Temporary Work Camps (April, 1979), 15 pp.
- Guidelines for Environmental Protection from the Development of Electrical Transmission Lines (February, 1980), 31 pp.
- Guidelines for Environmental Protection During Road Development (September, 1981), 54 pp.
- Guidelines for Environmental Protection During Mineral Exploration in Northern Saskatchewan (March, 1983), 33 pp.
- Guidelines for Collection of Environmental Data -- Heavy Oil Thermal Pilot Projects (January, 1985), 27 pp.
- Guidelines for Environmental Protection During Development and Restoration of Sand and Gravel Pits (November, 1987), 8 pp.
- Guidelines for Preparation of an Environmental Protection Plan for Oil and Gas Projects (Draft).
- Guidelines for Conducting Siesmic Exploration on Environmentally Sensitive Lands in Southern Saskatchewan (Draft).
- Guidelines for Oil and Gas Development on Environmentally Sensitive Lands in Southern Saskatchewan (Draft).
- Guidelines for Reclamation of Sensitive Terrain in Southern Saskatchewan (Draft).

Saskatchewan's Environmental Assessment and Review Process


Proponent submits a project proposal to Saskatchewan Environment and Public Safety
EIA Required
EIA Not Required
Environmental Assessment Review Panel reviews proposal on request from Saskatchewan Environment and Public Safety
Minister MAY appoint Board of Inquiry if circumstances warrant it
Public hearings may be held and further information is gathered
Board makes recommendations to Minister
Project-specific EIA guidelines are prepared. Public notice is given. Proponent completes EIA and submits impact statement
Statement and department's Technical Review Comments are made available to the public for comment and information meetings may be held
Project can proceed subject to other regulatory requirements and environmental protection commitments
Environmental Assessment Review Panel reviews impact statement on request from SEPS
Approval not given
Approval Given
Project is not allowed to proceed
Project can proceed subject to required licenses, permits and environmental protection measures
Follow-up studies, monitoring and environmental audits

III *General Guidelines for the Preparation of a Project Proposal*

1. FOREWORD

The Saskatchewan environmental assessment process normally begins with the submission, by the proponent, of a project proposal. Information on a development project may be provided to Saskatchewan Environment and Public Safety when it is expected that approval under *The Environmental Assessment Act* will be required, or when a proponent is unclear of whether a project will require approval under the Act or any other legislation and regulations administered by the department.

Proposals are screened by the department to determine whether an environmental impact assessment would be required or whether the project could proceed subject to other applicable regulatory requirements.

2. INFORMATION REQUIREMENTS

2.1 A project proposal should provide a sound basis for identifying the likely environmental effects of, and concerns about, a proposed project. The proposal should, at a minimum, present a clear, concise and complete description of:

a) *what* is proposed (i.e., the physical characteristics of the project);
b) *where* it is to be located (preferably by use of both regional and local maps with easily recognizable reference features);
c) *when*, *how*, and *by whom* it is to be constructed, operated, maintained and decommissioned; and
d) *why* it is being proposed at this time (i.e., what will be achieved if the project proceeds and, if pertinent, how it will contribute to the achievement of a broader plan, program or policy).

2.2 Whenever possible, the proposal should provide additional details regarding:

a) all natural, human and economic resources (inputs) the project can be expected to utilize or require during each of its construction, operation, maintenance and decommissioning phases, and where and under what conditions those resources are to be obtained;
b) all products and wastes (outputs) the project can be expected to generate and how and where those products are to be treated, stored, contained, transported, used and/or disposed of;
c) any special risks or hazards the project might present, and contingency plans which are to be implemented in the event of their occurrence;
d) any other projects or activities which are ancillary to or associated with, which will be necessitated by, or which are likely to follow as a result of, the project being proposed;

e) any associated or essential works which are already in place;
f) any activities which have preceded the proposal or will precede the proposed project (e.g., exploration, planning, surveying, public involvement, land acquisition, contacts with regulatory agencies and local authorities); and
g) any environmental protection plans for the construction, operation and eventual decommissioning or abandonment of the project.

Where (some of) this information is necessary for a thorough evaluation of the proposal, the department will request a more detailed project description prior to deciding on whether approval under the Act is necessary for the proposed project.

2.3 Proponents are encouraged to include in their proposals information about the biophysical and socio-economic characteristics of the area in which the project is to be located and of areas which could be affected by the project.

A preliminary assessment of impacts is also desirable. This will help reduce the time required for Saskatchewan Environment and Public Safety to identify the project's potential environmental implications.

2.4 A project proposal should identify any alternatives (including alternative designs, processes, methods, locations and timing), which the proponent considered prior to selecting the proposed course of action, and explain why each was rejected in favour of the proposed course of action. This explanation should include a brief account of the extent to which biophysical and/or socio-economic considerations influenced the proponent's identification of, and subsequent choice among, alternatives.

2.5 If a proponent has not made a final choice among alternative means of proceeding at the time a project proposal is to be submitted, then those alternatives should be described in the proposal. Criteria which would influence the proponent's eventual choice among those options, and the means by which that choice will be made, should also be presented.

2.6 Proponents are urged to establish early contact with the public and with local government officials in all jurisdictions which could be affected by the proposed project, or by any alternative being considered, to inform them about the planned project and seek their reaction to it. The extent and outcome of all such contacts should be reported in the project proposal.

2.7 Generally, 20 to 25 copies of a project proposal are required. Proposals should be submitted to:

Director
Environmental Assessment Branch
Saskatchewan Environment and Public Safety
3085 Albert Street
Regina, Saskatchewan S4S 0B1

IV *General Guidelines for Conducting an Environmental Impact Assessment*

1. FOREWORD

These guidelines apply to all projects for which ministerial approval under *The Environmental Assessment Act* is considered necessary. The objectives of the guidelines are:

a) to help ensure that the environmental implications of new developments are recognized and considered along with economic implications during project planning; and
b) to assist proponents of such developments in preparing for and conducting environmental assessments.

These general guidelines focus on *how* an environmental impact assessment should be conducted. Saskatchewan Environment and Public Safety assists the proponent in determining *what issues* should be addressed through project-specific study guidelines and consultation throughout the EIA.

2. PURPOSE OF AN ENVIRONMENTAL IMPACT ASSESSMENT

Environmental assessments are required for those projects with the potential to result in significant adverse environmental impacts. An EIA is conducted to provide the information necessary to determine whether, from an environmental perspective, a proposed development should be allowed to proceed and, if so, under what conditions.

To fulfill this objective an EIA should:

a) provide an accurate and comprehensive evaluation of the positive and negative environmental (socio-economic and bio-physical) changes likely to result from the proposed development, thereby identifying the main environmental tradeoffs associated with the project;
b) incorporate commitments by the proponent to implement effective mitigative and enhancement measures to avoid or minimize adverse impacts and enhance positive impacts; and
c) involve the potentially affected public in project planning, prediction and evaluation of impacts, formulation and evaluation of mitigative and enhancement measures, and assessment of the overall environmental acceptability of the development.

3.

The proponent will benefit from initiating the EIA as early as possible. If contact is made with Saskatchewan Environment and Public Safety sufficiently early, environmental considerations can be incorporated into project planning at the least possible cost. The EIA is best undertaken as an integral part of normal project planning, thereby minimizing potential delays and duplication of effort.

At the outset of an EIA it is important to identify the critical environmental issues upon which the assessment should focus. This will ensure not only that the EIA will provide the key information necessary to determine the environmental acceptability of the project, but also that the proponent's time and resources are focused on the most significant environmental issues. Saskatchewan Environment and Public Safety will assist the proponent in this "scoping" exercise. The public should also have the opportunity to play a role in identifying critical environmental issues.

A logical sequence of steps to follow in conducting an EIA is outlined below:

a) identify the objectives of the proposed project;
b) identify feasible alternatives for meeting those objectives;
c) assess impacts by:
   i) evaluating the salient features of the existing environment;
   ii) predicting and evaluating the likely environmental implications of the development and of feasible alternatives;
d) identify and evaluate mitigative and enhancement measures;
e) select a preferred alternative on the basis of both environmental and economic criteria; and
f) prepare a final report, the environmental impact statement (EIS), to document the preceding analyses, summarize the environmental tradeoffs associated with the proposed development (or alternatives), and provide a commitment to implementing mitigative and/or enhancement measures.

The following sections discuss the purpose served by specific steps of the EIA process and provide general guidance as to how each should be carried out.

4.

At an early stage in the EIA the proponent should undertake a program of public involvement to identify issues which residents of the project area feel should be addressed in the impact assessment. Public input should be used in identifying potential impacts associated with the project, in evaluating the significance of those effects and in joint community-proponent planning of mitigation and enhancement measures.

The public involvement program should not be limited to one-way communication from the proponent to the public. The proponent should actively solicit input from the general public in the area of the proposed development, and from other individuals or groups likely to have an interest in the project and the impact assessment process. Saskatchewan Environment and Public Safety can provide advice as to the type of public involvement program which may be most effective.

The findings of the program should be an integral part of the assessment and should be fully documented in the EIS together with the proponent's responses to any stated concerns.

5.

5.1 Costs and Benefits

The EIS should explain why the proponent is proposing the development at this time. This will set the stage for the EIA to provide the information necessary for the public and responsible authorities to address two key questions:

a) could the same objectives be met through another more environmentally acceptable but still economically feasible alternative?
b) do the benefits of the project to the province justify the environmental costs?

5.2 Project Alternatives

The purpose of the EIA is to provide information necessary for determining whether, from an environmental perspective, a development should proceed. One of the critical pieces of information necessary for this decision is whether there are other more environmentally acceptable alternatives which could meet the project's objectives. It is important, therefore, for the proponent to consider various alternatives early in the planning process and to compare these on both economic and environmental grounds.

Where applicable, consideration of alternatives should encompass three broad categories:

a) non-structural alternatives (e.g., increased energy conservation, or changes to the timing of project development);
b) structural or process alternatives (e.g., various pollution control methods, or the choice of construction materials); and
c) site selection alternatives (e.g., alternative routings for a pipeline, or alternative locations for a tailings pond or mill).

On the basis of initial feasibility and environmental studies the proponent will likely select a small number of alternatives to subject to more detailed examination. In some instances it may be evident that only a single feasible project alternative should be documented in the EIS.

5.3 Physical Description

A description of each of the alternatives selected for detailed study should be prepared for presentation to the public during the EIA and for inclusion in the EIS. The proponent should provide detailed descriptions of all project components including data related to:

- the proposed facilities (i.e., dimensions, major components, layout, etc.);
- where the facilities are to be located (preferably by use of both regional and local maps with easily recognizable reference features indicated thereon); and
- when (i.e., the anticipated schedule); how (i.e., the planned implementation methods) and by whom (i.e., the estimated manpower and skill requirements) they are to be constructed, operated, maintained and abandoned.

6. DESCRIPTION OF THE EXISTING ENVIRONMENT

The EIA should provide a satisfactory baseline from which to predict and evaluate the probable environmental implications of the project. Baseline data of an adequate quality and quantity should be collected for key environmental parameters in order to:

a) provide an understanding of existing conditions;
b) allow for predictions of how the project may cause these key environmental components to change;
c) allow for predictions of how adverse effects can be mitigated and beneficial effects enhanced; and
d) provide a sound basis for designing and evaluating the results of post-EIA studies.

The description of the existing environment may include various biophysical, social and economic parameters. Major categories within a broad environmental checklist would include:

- air;
- water;
- geology;
- soils;
- natural vegetation;
- fisheries resources;
- wildlife resources;
- heritage resources;
- land use; and
- community environment.

In principle, to be of real value for impact prediction and subsequently to provide a sound basis for monitoring and environmental audits, baseline data should provide a statistically valid measure of the parameter's natural variability (as distinct from later, project-induced change) during the pre-project period. Similarly, methods for collection of baseline and monitoring data on particular features should be consistent and compatible, making planning of the monitoring program integral to planning baseline data collection.

The need for, types of, and procedures to be used in collecting baseline data are often parameter-, site-, and project-specific. In general, the quantity and quality of information on a particular subject area should be proportional to the anticipated degree of impact on that parameter. Use of existing information is encouraged although there will often be a need to collect additional data for certain parameters. Information should not be presented simply as an inventory of available data, but should be collected and analyzed using methodologies that yield data of a quality and in a level of detail such that they will be of practical use in predicting and evaluating impacts and in forming a sound basis for post-EIA studies. Additional baseline information should be collected where data gaps exist for key parameters and where more recent and perhaps different types of information would result in a better understanding of existing conditions and potential impacts of the proposed development.

Specific commitments should be made to implement appropriate monitoring and follow-up studies. In addressing the question of monitoring, the proponent should look beyond routine compliance monitoring (e.g., water quality sampling at a work camp sewage disposal site as a condition of a permit) to an evaluation of the impact assessment itself. EIAs are, necessarily, of a predictive nature and it is appropriate for development proponents to undertake studies (audits) designed to assess the accuracy of identified environmental protection measures. Follow-up studies may also be needed in order to gather data not necessarily required for the preparation of the EIS, but which would be required to determine when (and if) specific mitigative measures should be implemented.

7. ASSESSMENT OF IMPACTS

Impact prediction and evaluation provide the basis for determining the major environmental conflicts associated with a project. They also establish the basis for identification of mitigative and enhancement measures and for determining environmental tradeoffs associated with a development.

The EIA should provide a complete and, wherever practicable, quantitative analysis of all potentially significant effects of the proposed development, including: construction, operation, maintenance and decommissioning; provision of essential inputs; planned or inadvertent disposition of outputs; and each necessary ancillary facility. Each analysis should identify the potential environmental change, indicate the likelihood that each environmental change will occur, and anticipate the magnitude, duration, and probable significance of that change. The rationale for these conclusions should be presented. The extent to which public input influenced these analyses, particularly assessments of impact significance, should be explained in the EIS.

The EIA should examine impacts during all project phases under both normal conditions and defined worst case scenarios, and should assess the overall environmental risks associated with proceeding with the project.

The extent to which gaps in the data base prevent or impair impact assessment should be evaluated and the inappropriate limitations placed on the reliability of predictions.

8. IDENTIFICATION AND EVALUATION OF MITIGATIVE AND ENHANCEMENT MEASURES

The purpose of identifying and evaluating mitigative and enhancement measures is to:

a) eliminate or minimize predicted adverse environmental impacts;
b) enhance predicted positive environmental effects;
c) through the EIS, document the proponent's future commitments and responsibilities; and
d) determine what residual impacts might be anticipated after implementation of mitigative and enhancement measures.

Wherever an impact analysis suggests that an environmentally undesirable situation could occur as a result of the proposed development, ancillary facilities, or accidents associated with any of the foregoing (e.g., spills), the EIS should indicate specifically what preventive or mitigative measures the proponent will employ to retain or achieve an acceptable, or more desirable, state. Contingency plans that will be in place to remedy or control undesirable events should also be described. Where the application of mitigative measures will depend upon information obtained from environmental monitoring or other studies conducted during or after the project's construction or operation, the EIS should provide a detailed description of the planned program (e.g., what is to be monitored, sampling frequency, methodology) and explain how the results thereof will ensure, or contribute to achieving, successful impact prevention or mitigation. The costs (both financial and environmental) and anticipated level of success of each preventive or mitigative measure, including any necessary monitoring or follow-up studies, should be stated. Similarly, any adverse environmental impacts which cannot be mitigated or can be only partially mitigated should be identified and evaluated.

Where the EIA concludes that the development may result in beneficial impacts, the proponent should outline what will be done to maximize opportunities for enhancement from the project.

9. PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT

The EIS should include the following, although not necessarily in this order;

a) executive summary;
b) statement of project objectives;
c) identification and description of project alternatives;
d) rationale for selection of preferred alternative;
e) detailed project description for preferred alternative;
f) description of the existing environment;
g) description and evaluation of predicted impacts;
h) identification of, and commitment to, mitigative and enhancement measures, and appropriate post-EIA studies; and
i) documentation of public participation program.

The EIS should include documentation of all methodologies used and the assumptions employed in various analyses. The rationale for various decisions made regarding the method of assessment should be described, and the basis of each conclusion stated in the EIS.

The EIS should be the proponent's report, indicating what the proponent has concluded and what measures the proponent will undertake if the project proceeds. A report of recommendations proposed by a consultant to the proponent, but not explicitly endorsed by the proponent, is not acceptable.

The EIS will be available for public review and should be written so it can be understood by non-specialists. A glossary of technical terms may be useful. The EIS Summary, in particular, should be written in non-technical language and be suitable for widespread public distribution. The report, especially the Summary, should be printed so that black and white reproductions can be made easily.

As revisions to the EIS may be required following Saskatchewan Environment and Public Safety's technical review (prior to release for public review), the proponent may wish to consider a format and binding amenable to revision.

The proponent should consult with Saskatchewan Environment and Public Safety about the number of copies required. Approximately 25 copies of the EIS plus 50 or more copies of the Summary are normally required, but the quantities vary considerably among projects.

10. SUMMARY

The EIS should provide a concise but complete statement of the anticipated net environmental costs and benefits of the project, including those costs and benefits which can be and cannot be expressed in monetary terms. The statement should clearly indicate what must be spent or given up, and what will be gained, in both the long and short terms, if the development is allowed to proceed.

The Saskatchewan Environmental Assessment Act

Chapter E-10.1

AN ACT RESPECTING THE ASSESSMENT OF THE IMPACT ON THE ENVIRONMENT OF NEW DEVELOPMENTS

Short Title

1 This Act may be cited as ***The Environmental Assessment Act***. *Short title*

Interpretation

2 In this Act: *Interpretation*

(a) "assessment" means an environmental impact assessment required under section 9; *"assessment"*

(b) "contaminant" means any substance, whether gaseous, liquid or solid, that: *"contaminant"*

(i) is foreign to or in excess of the natural constituents of the environment; or

(ii) affects the natural, physical, chemical or biological quality of the environment;

and that is or may be injurious to the health or safety of persons or injurious or damaging to property or to plant or animal life;

(c) "Crown" means Her Majesty in right of Saskatchewan; *"Crown"*

(d) "development" means any project, operation or activity or any alteration or expansion of any project, operation or activity which is likely to: *"development"*

(i) have an affect on any unique, rare or endangered feature of the environment;

(ii) substantially utilize any provincial resource and in so doing pre-empt the use, or potential use, of that resource for any other purpose;

(iii) cause the emission of any pollutants or create by-products, residual or waste products which require handling and disposal in a manner that is not regulated by any other Act or regulation;

(iv) cause widespread public concern because of potential environmental changes;

(v) involve a new technology that is concerned with resource utilization and that may induce significant environmental change; or

(vi) have a significant impact on the environment or necessitate a further development which is likely to have a significant impact on the environment;

(e) "environment" means: *"environment"*

(i) air, land and water;

(ii) plant and animal life, including man; and

(iii) the social, economic and cultural conditions that influence the life of man or a community insofar as they are related to the matters described in subclauses (i) and (ii);

(f) "environment officer" means an environment officer appointed pursuant to *The Environmental Management and Protection Act*; *"environment officer"*

(g) "minister" means the member of the Executive Council to whom for the time being the administration of this Act is assigned; *"minister"*

(h) "ministerial approval" means the written approval of the minister given pursuant to subsection 15(1) or 16(2); *"ministerial approval"*

(i) "municipality" means a municipality as defined in *The Urban Municipality Act, 1984* or *The Rural Municipality Act* or a northern municipality; *"municipality"*

(j) "person" includes a body corporate or other legal entity, an unincorporated association, partnership or other organization, a municipality and the Crown, a Crown corporation or an agency of the Crown; *"person"*

(k) "pollutant" means a substance, including a contaminant, which results, or is likely to result, in pollution of the environment; *"pollutant"*

(l) "pollution" means alteration of the physical, chemical, biological or aesthetic properties of the environment, including the addition or removal of any contaminant, that: *"pollution"*

(i) will render the environment harmful to public health;
(ii) is unsafe for or harmful to domestic, municipal, industrial, agricultural, recreational or other lawful uses of the environment; or
(iii) is harmful to wild animals, birds or aquatic life;

(m) "proponent" means a person who proposes or desires to undertake a development; *"proponent"*

(n) "statement" means an environmental impact statement required under section 9. 1979-80, c.E-10.1, s.2; 1983, c.77, s.25; 1988, c.42, s.37; 1988, c.55, s.9. *"statement"*

Application of Act

3 This Act binds the Crown. 1979-80, c.E-10.1, s.3. *Act binds Crown*

4 Where in the opinion of the Lieutenant Governor in Council there is an emergency, he may exempt any development, any class of developments or any proponent from the application of all, or any part, of this Act or the regulations. 1979-80, c.E-10.1, s.4. *Exemption from Act*

Powers of Minister

5 For the purpose of administering and enforcing this Act and the regulations, the minister may: *Powers of minister*

(a) conduct research with respect to the environment, assessments or statements;
(b) conduct studies of the quality of the environment, environmental planning, assessments or statements;
(c) gather, publish and disseminate information with respect to the environment, assessments or statements;
(d) appoint committees to perform any advisory functions that he considers necessary;
(e) make any examinations, tests and other arrangements that he considers necessary;

(f) with the approval of the Lieutenant Governor in Council, enter into an agreement with any government or person with respect to the environment, assessments or statements. 1979-80, c.E-10.1, s.5.

6 **Repealed. 1988, c.42, s.36.**

Power to limit disclosure

7 Where, in the opinion of the minister, it is in the public interest or in the interest of any person, the minister may, subject to the regulations, withhold or limit production, public inspection or discovery of any information or document that relates to a development, other than any information or document that relates to pollutants, public health or human safety. 1979-80, c.E-10.1, s.7.

Ministerial Approval Required

Ministerial approval required

8(1) Notwithstanding the requirements of any other Act, regulation or bylaw relating to any licence, permit, approval, permission or consent, a proponent shall obtain ministerial approval to proceed with a development, and no person shall proceed with a development until he has received ministerial approval.

(2) Where a conflict exists between any condition of any licence, permit, approval, permission or consent granted under any other Act, regulation or bylaw and a condition of the ministerial approval, the condition of the ministerial approval prevails.

(3) Notwithstanding subsection (1), a proponent may, subject to the regulations, conduct a feasibility study, including research and exploration, and may take any other necessary action to comply with this Act before obtaining ministerial approval to proceed. 1979-80, c.E-10.1, s.8.

Assessment and Review Procedure

Assessment and statement required

9(1) The proponent of a development shall, in accordance with the regulations:

(a) conduct an environmental impact assessment of the development; and
(b) prepare and submit to the minister an environmental impact statement relating to the development.

(2) The proponent shall bear all costs incurred in carrying out an assessment and in the preparation and submission of a statement. 1979-80, c.E-10.1, s.9.

Minister to give notice of assessment

10 When the minister becomes aware that an assessment is about to be conducted, he shall immediately give notice of the assessment in any manner that may be prescribed in the regulations. 1979-80, c.E-10.1, s.10.

Review of statement

11(1) The minister shall cause a review to be prepared of each statement that he receives.

(2) When the review mentioned in subsection (1) is completed, the minister shall:

(a) make the statement and review available for public inspection; and
(b) give notice, in the manner prescribed in the regulations, of the locations at which the statement and the review may be inspected, and may prescribe any conditions relating to the inspection that he considers appropriate. 1979-80, c.E-10.1, s.11.

Inspection of statement

12 Any person may:

(a) inspect a statement and review that is available for public inspection pursuant to subsection 11(2);

(b) make a written submission to the minister within 30 days from the date when the minister first gives notice pursuant to subsection 11(2), or, if the minister considers it appropriate, within an additional period of 30 days. 1979-80, c.E-10.1, s.12.

Public information meeting

13 At any time prior to making his decision whether to approve a development, the minister may:

(a) cause an information meeting to be conducted relating to the development; and

(b) direct the proponent to make experts available to attend the meeting. 1979-80, c.E-10.1, s.13.

Inquiries

14(1) At any time prior to making his decision whether to approve a development, the minister may appoint persons to conduct an inquiry or inquiries with respect to all, or any aspect of, the development, and shall set the terms of reference for the inquiry.

(2) The persons appointed under subsection (1) have all the powers of commissioners under *The Public Inquiries Act* and may engage the services of any professional or other advisors, experts, assistants or employees that they consider necessary.

(3) The minister may:

(a) pay to persons appointed pursuant to subsection (1) any remuneration for their services and allowances for expenses incurred by them that the minister may determine; and

(b) enter into agreements with those persons, and impose any conditions that he considers appropriate, to provide for the manner of payment, including payment by way of accountable advance. 1979-80, c.E-10.1, s.14.

Ministerial approval

15(1) Where the minister is satisfied that a proponent has met all the requirements of this Act, he shall, within a reasonable time after making his decision:

(a) give ministerial approval to proceed with the development and may impose any terms and conditions that he considers necessary or advisable; or

(b) refuse to approve the development.

(2) The minister shall give notice of his decision, together with written reasons for the decision, to:

(a) the proponent;

(b) any person who has made a written submission to the minister pursuant to section 12; and

(c) any other persons that the minister considers advisable. 1979-80, c.E-10.1, s.15.

Changes in approved developments

16(1) Where a proponent:

(a) has received ministerial approval to proceed; and

(b) intends to make a change in the development that does not conform to the terms or conditions contained in the ministerial approval;

he shall inform the minister of the proposed change before proceeding with it.

(2) Where the minister has received notice of a proposed change, he shall:

(a) give ministerial approval of the proposed change and may impose any terms and conditions that he considers advisable;
(b) refuse to approve the change in the development; or
(c) direct the proponent to seek approval for the proposed change in the manner prescribed in sections 9 to 15.

(3) No person shall proceed with a change in a development until he has been given ministerial approval to proceed. 1979-80, c.E-10.1, s.16.

Development to proceed in accordance with ministerial approval

17 No person shall proceed with a development for which he has received ministerial approval, except in accordance with the terms and conditions of the ministerial approval. 1979-80, c.E-10.1, s.17.

Order enjoining development

18 The minister may apply to Her Majesty's Court of Queen's Bench for Saskatchewan for an order enjoining any person from proceeding with a development contrary to this Act or to the terms and conditions of any ministerial approval, and the court may make an order on any terms and conditions that it considers appropriate. 1979-80, c.E-10.1, s.18.

Power to conduct investigation

19 Where, in the opinion of the minister, the terms and conditions of a ministerial approval are not being complied with, he may:

(a) cause any investigation, inspection or inquiry to be conducted; and
(b) require any information or document to be submitted to him;

that he considers necessary to determine whether the ministerial approval is being complied with. 1979-80, c.E-10.1, s.19.

Offences

Prohibition re: giving false information

20 No person shall knowingly give false information to:

(a) the minister;
(b) any environment officer;
(c) any board of inquiry appointed under this Act; or
(d) any appointee of, or person employed by or acting on behalf of, the minister or a board of inquiry;

in respect of any matter to which this Act or the regulations relate. 1979-80, c.E-10.1, s.20.

Offence and penalty

21 Any person who contravenes subsection 8(1) or 16(3), section 17 or 20 or subsection 25(3) is guilty of an offence and liable on summary conviction to a fine of not more than $5,000 and, in the case of a continuing offence, to a further fine of not more than $1,000 for each day or part of a day during which the offence continues. 1979-80, c.E-10.1, s.21.

Limitation on prosecution

22 No prosecution for an offence under this Act is to be commenced after two years from the day of the commission of the alleged offence. 1979-80, c.E-10.1, s.22.

Liability

Liability for damages

23(1) Where any person proceeds with a development for which ministerial approval is required without:

(a) being given ministerial approval; or

(b) being exempted pursuant to section 4;

he is liable to any other person who suffers loss, damage or injury as a result of the development, and that other person is not required to prove negligence or intention to inflict loss, damage or injury.

(2) The burden of proving that any loss, damage or injury was not caused by a development is on the person who proceeds with the development. 1979-80, c.E-10.1, s.23.

General

Service of notice

24(1) Any notice required to be given by this Act or the regulations is, unless otherwise provided for, to be served personally or mailed by registered mail to the last known address of the person being served.

(2) A notice served by registered mail is deemed to have been received on the seventh day following the date of its mailing, unless the person to whom it was mailed establishes that, through no fault of his own, he did not receive the notice or he received it at a later date. 1979-80, c.E-10.1, s.24.

Order authorizing entry and seizure

25(1) Where a judge of the Provincial Court of Saskatchewan is satisfied by information on oath that there are reasonable grounds to require an order to enable an environment officer to carry out the duties assigned to him, the judge may issue an order on any terms and conditions he considers appropriate, authorizing an environment officer to:

(a) enter and search any land, building or chattel; and
(b) seize any chattels, documents or samples;

described in the order.

(2) Every environment officer, while exercising his authority pursuant to an order issued under this section, shall produce a copy of the order upon the request of any person who has the custody, possession or control of any land, building, chattel or document described in the order.

(3) No person shall obstruct or impede an environment officer acting pursuant to an order issued under this section. 1979-80, c.E-10.1, s.25.

Environment officer to preserve confidentiality

26(1) Every environment officer shall preserve confidentiality in respect of any matter that comes to his knowledge in the course of any investigation, inspection, test or inquiry under this Act and no environment officer shall communicate any such matter to any person except:

(a) as may be required in connection with the administration of, or in any proceeding under, this Act and the regulations;
(b) to his counsel; or
(c) with the consent of the person to whom the information refers.

(2) Except in a proceeding under this Act or the regulations, no environment officer is required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of any investigation, inspection, test or inquiry under this Act or the regulations. 1979-80, c.E-10.1, s.26.

Regulations

Regulations

27 The Lieutenant Governor in Council may make regulations:

(a) respecting any requirement relating to an assessment or a statement;
(b) respecting any guideline applicable to the approval of any development;
(c) respecting the manner and form of giving notice under this Act;
(d) prohibiting or regulating, in all or any part of the province, any feasibility study or any other action permitted under subsection 8(3);
(e) specifying the grounds on which the minister may withhold or limit disclosure of any information, matter or document relating to a development. 1979-80, c.E-10.1, s.27.

The Environmental Assessment and Review Process in Other Parts of Canada

WHO ADMINISTERS THE EA PROCESS?

All provinces in Canada rely on branches, divisions or departments to administer environmental assessment legislation on behalf of a Minister. In Alberta, The Energy Resource Conservation Board reviews all coal, oil, gas and hydro projects in their entirety (i.e., from environmental, technical and economic efficiency perspectives). The board does not, however, administer the environmental assessment process. The relevant Acts state that the board must refer any application to the Minister of the Environment and must incorporate all of his conditions into any approval. This approach integrates industry-oriented agencies and environment.

Northern Quebec's process is somewhat different in that review and evaluation committees are set up, and membership from local native authorities is mandatory. Representatives from provincial and federal agencies also participate in the process. The Minister can exercise veto on any project previously approved by a committee. Other committees make recommendations directly to the Minister.

Most provinces have an Environmental Assessment Act or Environmental Assessment Regulations in which the EA process is entrenched. It appears that there is little integration of environmental considerations into other legislation. In many cases, economic development departments and environment departments work independently of one another on the same issue. Consequently, by the time a project is referred to an environmental assessment branch, design details and feasibility may have already been determined. This has been identified as a problem in Ontario, and *Working Paper 1*, written as part of their review of environmental assessment, states: "By the time proponents address the Act's requirements, they, more often than not, have a schedule for project implementation and expect the EA review and approval process to be fairly straightforward ... there is often a mismatch between the process and the role proponents may have chosen for it [which] ... in turn, has been cited as undermining program credibility and effectiveness". (Smith 1990)

Ontario's *Working Paper* offers some possible solutions. First, the EA process requires that a strong policy commitment on behalf of government be in place that stresses the environment as everyone's responsibility, not just that of the Department of Environment. A second potential solution relates to avoiding the reactive nature of the process. That is, rather than reviewing projects after they have been proposed and committed to by the proponent and often by government, a proactive position can be achieved through the following guidelines: i) integrate EA into all government legislation and programs, rather than solely in the environment ministry, coupled with a stipulation that all public and private sector activities, without exception, be exposed to EA; ii) build on the Class EA system which allows for certain types of activities with predetermined environmental effects and mitigative measures to be approved in advance without a project-specific EIA unless there are unique aspects of the project. (Under the Class EA in Ontario, proponents must follow prescribed protocols and procedures when deciding whether or not to proceed with the undertaking); iii) making sure environmental effects of government policies and programs are considered at an early planning stage to avoid reactive measures later; iv) rather than predicting the impacts of EIAs, monitoring and follow-up to determine environment effects should be improved; v) evaluating the EA process with interested parties to determine its success; and vi) inform the public of any developments pertaining to environmental ethics.

British Columbia has attempted to integrate environmental considerations into a number of departments, most of which have a relatively standard referral procedure. This process attempts to identify any environmental and socio-economic problems in projects for which the initiating department has regulatory responsibility. The numerous review committees, co-ordinating committees, and associated departments tend to put a strain on the environmental evaluation process, in that there are too many participants and duplication is difficult to avoid.

A number of provinces, namely, Ontario, Alberta and Saskatchewan, are currently reviewing their legislation.

HOW AND TO WHAT SHOULD THE EA REVIEW BE APPLIED?

Several of the provinces use lists of activities and undertakings, as a guide to ensure that certain types of project proposals are received by environment departments. An internal panel or agency then reviews the proposal to determine whether an EIA should be conducted.

These lists vary between provinces. Some are very specific and follow the Standard Industrialization Classification Manual that is published by Statistics Canada. Other lists are general and cover broad categories for proposal submission (e.g., mining, waste management, manufacturing). Some lists specify size or volume criteria within each category of activity.

In British Columbia, for example, " ... all electric power facilities with a production rating of three megawatts or more ..." must apply for an energy project certificate which may require agreement by the Minister of Environment and a referral to the Utilities Commission for review. These approaches ensure that certain projects are reviewed, but do not guarantee that they will undergo an EIA.

In Quebec, there is a list of projects subject to environmental impact assessment. The list includes projects such as dams and dykes greater than 200,000 square metres, and main forestry roads.

In addition to lists of general or specific activities, three provincial Acts include the phrase, "in the opinion of the Minister", in their definition of an "undertaking". An undertaking is an activity which, in the opinion of the Minister, may have a significant impact on the environment. The phrase provides a reference point from which a decision can be made on whether a proposed project will have a significant impact. Saskatchewan's definition of the environment does not include this phrase, and therefore, the general criteria are open for interpretation by the proponent and the public.

All provinces use some form of provincial interdepartmental review panel to review project proposals, EIA documents, and to evaluate the environmental implications of proposed projects. Some provinces have more formal structures than others. Manitoba has an Interdepartmental Planning Board which considers proposals, determines the form of assessment required, and reviews and comments on the assessment report. British Columbia, however, relies on their Energy Project Co-ordinating Committee which consists of the Director of the Project Analysis Branch, the Director of the Assessment Branch, and a representative from the B.C. Utilities Commission. This committee reviews the regulated projects after a proposal has been submitted, advises the ministers on requirements for proponents, and reviews the information relevant to an impact assessment.

In terms of review procedures for smaller projects, a review of other approaches in Canada reveals that about half of the provinces have legislation which allows them to approve and impose conditions on "no-EIA" projects under Environmental Assessment legislation. Provision for such approvals is usually stated explicitly in the legislation, and Section 10 of Nova Scotia's Environmental Assessment Act is one such example: "Where the Minister decides that an environmental impact report is not required, the Minister shall approve the undertaking, upon such conditions as the Minister may determine, and the proponent may proceed with the undertaking, subject to any enactment".

In Manitoba, legislation for potential developments is categorized into three classes based on 8 criteria. For major developments, the Act states that the director may " ... require from the proponent detailed plans for environmental protection and management ... [and] ... the director shall issue a licence to the proponent with such specifications, limits, terms and conditions

or with a requirement for such modification as the director deems necessary to ensure effective environmental management". Similar requirements are in place for smaller projects.

WHO PREPARES THE EIA?

All other provinces in Canada require the proponent to complete the EIA and submit an EIS. This requirement is consistently stated in the legislation, similar to the approach currently taken in Saskatchewan.

IS THE PUBLIC INVOLVED AT AN EARLY STAGE IN THE PROCESS?

Some environmental assessment acts do not include any formal requirement for public involvement in the review of project proposals. However, in some cases, provincial guidelines indicate that discussions with the public may occur. In Newfoundland, the Minister announces receipt of a registration or "proposal", and makes it available to the public along with an invitation for comments. In New Brunswick, the record of registrations is open for inspection at the department during office hours. In Manitoba, a summary of a proposal is filed in a central public registry and a public announcement is made in order to receive any positive or negative feedback.

SHOULD PROPOSAL SUBMISSION BE LEGISLATED?

Some provinces, especially in Eastern Canada, legislate the submission of comprehensive and consistent information on a registration form or in a proposal. This generally includes the name of the undertaking, proponent, nature and purpose of the undertaking, description of the undertaking (location with maps, physical features, construction, operation, occupation, project related reports), approval requirements (permits, licences, approvals, authorization) schedule and funding. All projects identified on lists included in legislation are required to register. Based on the information provided on the registration form or in the proposal, a decision on the need for an EIA is made.

In some jurisdictions there is no requirement for project proposal submission in environmental assessment legislation. These jurisdictions do, on occasion, informally request proponents to submit proposals regarding projects in order to give direction for an environmental assessment of the project.

Alberta uses an informal approach that begins with "initial disclosure" so as to inform the department that a proponent is planning a potentially significant development. The department then works with the proponent to develop plans for the project.

ARE TERMS OF REFERENCE PREPARED?

Some provinces develop guidelines or terms of reference to be followed by the proponents. Most of the eastern provinces require that guidelines be provided to the proponent, and in turn, the proponent must prepare terms of reference consistent with the guidelines. Where the terms of reference are not consistent with the guidelines or are otherwise inappropriate, the proponent must revise the terms of reference until they accurately reflect the requirements as determined by the government. In New Brunswick, the Act specifies that if the EIA report does not meet the requirements of the final guidelines, the deficiencies must be remedied within a certain time frame before the report will be accepted, and before any approval is

given. New Brunswick's Act also requires that the guidelines be made public, and that representations from the public be taken into account when final guidelines are prepared.

Another option is the formulation of a standard set of guidelines respecting different types of EIA projects (e.g., oil and gas; hydroelectric). The proponent reviews these guidelines, discusses the project with the relevant agencies, and prepares terms of reference which outline the surveys, studies and programs to be undertaken. These are submitted to the appropriate agency for an interdepartmental review. Once reviewed, the proponent and government staff revise them as necessary, and confidential consent is given to the acceptable part of work. Once the EIS is submitted, it is reviewed relative to the final and mutually agreed upon terms of reference.

The third approach taken in some provinces is similar to Saskatchewan's. Project-specific guidelines are prepared and are given to the proponent. The EIA/EIS should properly address all issues outlined in the guidelines. There is no legislated requirement for the proponent to prepare terms of reference or confirm/commit to the way in which the EIA will be completed, or whether all issues will be addressed.

SHOULD SCHEDULES BE INCLUDED IN LEGISLATION?

Newfoundland, Nova Scotia, New Brunswick and Manitoba include specific schedules in their Acts or Regulations, especially as they pertain to proposal submission, review and response. Most of the remaining jurisdictions are less specific in outlining time frames, similar to Saskatchewan.

WHAT ARE THE PENALTIES?

Three provinces, Manitoba, New Brunswick and Prince Edward Island, enforce separate penalties for individuals versus corporations. Fines for individuals range from maximums of $5,000 to $10,000, while fines for corporations range from maximums of $50,000 to $200,000 in these three provinces. Ontario, Alberta and Newfoundland issue fines between $5,000 and $10,000 maximum limits. Nova Scotia issues a fine of $50,000 for the first offense, and $75,000 for the second offense. Many provinces also issue prison terms for default on payments. In British Columbia, a penalty of $100,000 can be levied. In addition, legislation states that a director or officer of the corporation who authorizes, permits or acquiesces in the offense, commits the same offense and is liable to the penalty for that offense.